(B)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 3159 /2004

PETITIONERS :

1. Suresh Verma, S/o Shivshankar Verma, aged 43 years,
2. Dinesh Verma, S/o Shivshankar Verma, aged 40 years,
3. Anil Verma, S/o Shivshankar Verma, aged 39 years,
4. Sunil Verma, S/o Shivshankar Verma, aged 36 years,
5. Susheel Verma, S/o Shivshankar Verma, aged 34 years,

All the above are R/o Juna, Bilaspur (C.G.)

P.R. No. 2139/04
Presented by Shri Naresh Kumar Singh
dated 26-8-04

-VERSUS-

RESPONDENT PLAINTIFF :

1. B.L.Madhukar, S/o Mangilal Madhukar, Director, Jobs Construction Pvt. Ltd., Baima Nagoi Chowk, Seepat Road, Bilaspur, Tahsil & District Bilaspur (C.G.)

RESPONDENTS DEFENDANTS :

2. Shivshankar Verma, S/o Saklu, aged 68 years, Caste-Kashyap,
3. Sundarlal, S/o Kanhaiya Lal Kashyap, aged about years,
4. Vinaykant, S/o Sundarlal Kashyap, aged about 28 years,
5. Ramgopal, S/o Saklu Kashyap, aged about 52 years,
6. Smt. Asha Bai, W/o Raghunath Kashyap, aged about 82 years,

Respondents 2 to 6 are R/o Juna, Opposite State Bank, Jwali Bridge, Bilaspur, Tahsil & District Bilaspur (C.G.)

शपथ आयुक्त
एम.के. गुप्ता
बिलासपुर (छ.ग.)
बिलासपुर तहसील कोर्ट

Rjeev

(4)

7. Smt. Krishna Bai, W/o Paramkhus Kashyap, aged about 47 years, R/o Juna, Jwali Bridge, Near Kali Temple, Bilaspur, Tahsil & District Bilaspur (C.G.)

8. Smt. Shakun Bai, W/o Jiyalal Kashyap, aged about 54 years, R/o Kududand, Near Water Tank, Bilaspur, Tahsil & District Bilaspur (C.G.)

9. State of Chhattisgarh through Collector, Bilaspur (C.G.)

WRIT UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(38)

आदेश पत्रक

मामला क्रमांक W.P.No. 3159/04 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	23.09.2004 Shri Rajeev Shrivastava, counsel for the petitioners. The petitioners have preferred this writ petition under Article 227 of the Constitution of India being aggrieved by the order dated 16.8.2004 (Annexure P-5) whereby the learned District Judge, Bilaspur rejected the application of the petitioners filed under Order1 Rule 10 read with Section 151 of CPC in Civil Suit No.14A/2003 filed for specific performance of the contract for sale. Brief facts leading to filing of this writ petition are that the plaintiff/respondent No.1 herein filed a civil suit for specific performance of the contract for sale against respondent Nos.2 to 8 herein on the ground that respondent Nos.2 to 8 herein entered into an agreement with respondent No.1 on 16.10.2000 for sale of a land, when respondent No.2 to 8 failed to execute the sale deed as agreed by them under the agreement for sale, respondent No.1 filed a civil suit for specific performance of contract for sale. During the pendency of that suit the petitioners herein filed an application under Order 1 Rule 10 read with Section 151 of CPC claiming themselves to be coparceners of the property in dispute. In the said application it has been mentioned by the petitioners herein that the suit property is ancestral property and they are coparceners, therefore, they have interest in the property in question and they be added as defendants in the proceeding. Learned District Judge, Bilaspur vide impugned order rejected the application of the petitioners on the ground that neither they are necessary party nor they have any interest in the litigation.	

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

I have heard Mr. Rajeev Shrivastava, counsel for the petitioners on the question of admission.

In this connection the provision of Order 1 Rule 10 of C.P.C. envisages that *'the Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any person who ought to have been joinded, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added".* Therefore, in two circumstances the name of any party can be allowed to be added in a pending suit; (1) that when the court reaches to the conclusion that the name of that person ought to have been joined; (2) whose presence before the court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

The suit in which this application was moved was filed by respondent No.1 herein against respondent No.2 to 8 for specific performance of contract for sale.

Learned counsel for the petitioners argued that the property in question was belonging to one Saklu, who died on 18.5.1988 leaving behind his widow Ramdulari, three sons namely Kanhaiya, Shivshankar & Ramgopal and three daughters namely Aasha Bai , Shakun Bai & Krishna Bai. Therefore, the petitioners herein being the grandsons of Saklu, sons of Shivshankar are the coparceners in

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the suit property and if any decree is passed in respect of the suit land then their interest will be affected.

I have perused the impugned order dated 16.8.2004 (Annexure P-5). It has been mentioned in the impugned order that in connection with the disputed property some civil litigation was filed between respondent No.2 to 8 and one another, which was registered as Civil Suit No.46-A/96 in the Court of First Civil Judge Class-II, Bilaspur, that suit was decided on 02.09.1998. Thereafter, an appeal bearing No.25-A/2000 was preferred before the 2nd Additional District Judge, Bilaspur. During the pendency of that appeal the parties entered into a compromise on 29.6.2000 whereby the property in question came into the share of respondent Nos. 2 to 8 herein. The main question involved in this suit is regarding the specific performance of the contract for sale, which was entered between respondent No.1 and respondent No.2 to 8. Therefore, in order to decide that question of specific performance the presence of the present petitioners is not essential in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit, their father is already defendant in the suit, who was party to the agreement for sale, therefore, whatever points petitioners want to raise that can be raised by their father.

Now coming to second point that the petitioners are the coparceners in the suit property, therefore, they have right in the property. In the first instance the father of the present petitioners along with other brothers who became owners of the property on

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मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

account of the decision of the civil suit and they had entered into an agreement for sale of that property in favour of respondent No.1 herein and against them respondent No.1 filed a civil suit for specific performance of contract for sale. In the circumstances, if the petitioners herein are allowed to be added as a party then that will amount to convert the suit of specific performance into a suit of title. Moreover, it appears from the order that the petitioners had not filed any document, which shows the right of the petitioners in the disputed property. In this connection the decision upon which the learned trial court has relied is of the Full Bench of M.P. High Court reported in **1976 M.P.L.J Vol. 21 Page 176 between Panne Khushali and another Vs. Jeewanlal Mathoo Khatik and another**, in that case also plaintiff/non-applicant No.1 filed a suit for specific performance in which applicants made an application for being joined as a party to the suit contending that the suit property is a coparcenery property and they as a coparceners are the co-owners of it and non-applicant No.2 had neither a right to enter into an agreement for sale, nor has a right to sell it, nor any such act of his can bind their shares in it. After discussing the law point, the Full Bench of M.P. High Court reached to the conclusion that the applicants are not the necessary parties, the suit is for specific performance of the contract entered into between the non-applicant No.1 and non-applicant No.2, the applicants are not parties to the contract. Neither the non-applicant No.1 has sought any relief against the applicants, nor there is any right of relief against these applicants on the basis of the contract entered into between the

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

non-applicant No.1 and non-applicant No.2, which is the subject matter of the suit. The decree sought is for the performance of the contract and it cannot be said that such a decree cannot be passed in absence of the applicants.

Learned counsel for the petitioners relied on the decision of the Hon'ble Apex Court passed in the matter of **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and others reported in (1992) 2 Supreme Court Cases 524,** in which the Hon'ble Apex Court has held that the addition of necessary party Court has judicial discretion which it has to exercise having regard to facts and circumstances of the case. In exercise of this discretion court can direct a plaintiff, though dominus litis, to implead a person as a necessary party defendant.

Therefore, in view of the direct decision of the Full Bench of M.P. High Court and for the reasons mentioned in the earlier part of this order, I am of the opinion that the petitioners are not able to point any infirmity in the impugned order which warrants the exercise of this Court vested under Article 227 of the Constitution of India, the petition of the petitioners deserves to be dismissed and accordingly, it is dismissed in limine at the admission stage itself.

Sd/-
L.C. Bhadoo
Judge

Roshan/padma

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